

Appendix G

Storm Water Permits and their Relationships to TMDLs

Phase II Stormwater Permits or MS4s

Under the Federal National Pollutant Discharge Elimination System (NPDES) storm water program, operators of large, medium and regulated small municipal separate storm sewer systems (MS4s) require authorization to discharge pollutants under an NPDES permit. West Virginia Department of Environmental Protection (DEP) has been authorized by EPA to implement the NPDES program in West Virginia. Phase I of the Federal Stormwater NPDES Program began in 1990 and covered municipalities having a municipal separate storm sewer system (MS4) and having a population greater than 100,000. Phase I also extended to construction activities which disturbed more than 5 acres of land and to 11 categories of industrial activity. Phase II extended the permittee requirement to small MS4s in urbanized areas as defined by the 1990 and 2000 census data and to construction activities requiring stormwater permits that disturb more than one acre.

MS4s were required to apply for permit coverage by March 10, 2003. The application must describe the stormwater management program they intend to implement, including a schedule, best management practices and measurable goals for each element of the municipal program.

Implementation of the Best Management Practices (BMPs) consistent with the stormwater management program and the Minimum Control Measures outlined in 40 CFR 132.34 is considered to constitute compliance with the standard of compliance, maximum extent practicable or MEP. To achieve reductions in stormwater discharges, EPA regulations establish six categories of Minimum Control Measures BMPs that must be met by permittees (these are "narrative" permit effluent limitations). The six BMP categories, also called "minimum control measures" in the Federal regulations, are:

1. Public education and outreach on stormwater impacts
2. Public involvement/participation consistent with state/local requirements in the development of a stormwater management plan.
3. Illicit discharge detection and elimination, including mapping of the existing stormwater sewer system (including at least the outfalls) and adoption of an ordinance to prohibit illicit connections and control erosion and sedimentation from development. .
4. Control of runoff from construction sites when one to five acres of land are disturbed. (Phase I covered sites larger than five acres.)
5. Post-construction stormwater monitoring and management in new development and redevelopment, and
6. Pollution prevention and good housekeeping for municipal operations and maintenance facilities

Under Phase II, permittees are also required to establish measurable goals for each BMP. EPA has developed a National Menu of BMPs available for meeting the minimum control measures. Information can be found on EPA's website at:

<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/menu.cfm>.

West Virginia's Municipal Separate Storm Sewer System (MS4) General Permit

The Municipal Separate Storm Sewer System (MS4) General Permit has been published and DWWWM is requesting public comments until February 24, 2003. The MS4 General Permit will cover storm water discharges from small regulated urbanized areas as well as public institutions such hospitals, universities, highways within urbanized areas, and prisons.

Attachment A includes a copy of the factsheet describing West Virginia's MS4 General Permit. Additional information can be on WVDEP's website at:

<http://www.wvdep.org/alt.cfm?asid=65#MS4>

The Relationship of MS4 Permits to TMDLs

The MS4 communities in the Guyandotte River watershed have received wasteload allocations for fecal coliform bacteria. A November 22, 2002, EPA Memorandum entitled "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Stormwater Source and NPDES Permit Requirements Based on Those WLAs" clarified existing regulatory requirements for MS4s connected with TMDLs. The Memorandum also affirms EPA's view that an iterative adaptive management BMP approach is appropriate. Some of the major points raised in the Memorandum include the following:

- NPDES-regulated stormwater discharges must be considered in the TMDL as Wasteload allocations and may not be addressed by the load allocation component of the TMDL.
- Most water quality based effluent limitations for NPDES-regulated municipal and small construction stormwater discharges will be in the form of BMPs.
- Numeric limits will be used in permits only in rare instances.
- EPA expects WLAs and LA's in TMDLs to be in numeric form, although EPA recognizes that these allocations might be fairly rudimentary because of data limitations and variability in the system.
- Stormwater discharges from sources that are not currently subject to NPDES requirements may be listed as LAs.
- The NPDES permit should specify monitoring necessary to comply with effluent limitations, to determine if expected load reductions from BMPs are expected to achieve the WLA in the TMDL, i.e., BMP performance data
- The permit should also provide a mechanism to make adjustments to the required BMPs as necessary to insure adequate performance.

Attachment A

**WEST VIRGINIA/NPDES
GENERAL PERMIT FOR STORM WATER
DISCHARGES
FROM SMALL MUNICIPAL SEPARATE STORM
SEWER SYSTEMS (MS4s)**

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
1201 GREENBRIER STREET
CHARLESTON, WV 25311-1088

WEST VIRGINIA/NPDES
GENERAL PERMIT FOR STORM WATER DISCHARGES
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

FACT SHEET AND RATIONALE

1. NAME AND ADDRESS OF APPLICANT: Any entity with storm water discharges from a small MS4 agreeing to be regulated under the terms and conditions of this proposed General Permit (except as noted herein).
2. GENERAL WV/NPDES PERMIT NO.: WV0116025
3. COUNTY: Any WV county
4. RECEIVING STREAM: Any WV stream
5. PUBLIC COMMENT PERIOD FROM January 24, 2003 TO February 24, 2003
6. BACKGROUND: Federal regulations issued in 1999 establish a permit requirement for small MS4 discharges. Portions of the federal regulation require states such as West Virginia to set up a permit program for these requirements and for affected MS4s to obtain permit coverage by March 2003. The WVDEP estimates that there are at least 40 municipalities that must meet these new permit requirements. Other entities such as prisons, hospitals, colleges, etc., located within designated urbanized areas that operate an MS4 will also be required to obtain permit coverage.

The federal regulations establish six categories of Best Management Practices (BMPs) that must be met by permittees. These are “narrative” permit effluent limitations. Those BMPs must be designed to reduce the discharge of pollutants from MS4s to the maximum extent practicable, to protect water quality and to satisfy the appropriate requirements of the federal Clean Water Act.

The six BMP categories, also called “minimum control measures” in the federal regulations, are:

- * Public Education and Outreach;
- * Public Participation and Involvement;
- * Illicit Discharge Detection and Elimination;
- * Construction Site Runoff Control;
- * Post Construction Storm Water Management in New Development and Redevelopment; and
- * Pollution Prevention and Good Housekeeping for Municipal Operations and Maintenance.

The EPA has promulgated two phases of storm water permit regulations in the past ten years. Phase I covered large and medium municipalities, as well as, industrial activities, including construction disturbances exceeding 5 acres in size. This was implemented in WV in 1992. However, WV did not have any municipalities meeting the population requirements to be considered a large or medium entity. As such, no Phase I permit was issued for separate storm sewer systems. Also, the permitting threshold for construction activities was lowered to 3 acres.

Phase II of the federal storm water regulations, the ones addressed in this Fact Sheet, expanded the universe of municipalities to smaller "urbanized areas" (UA) and lowered the threshold for construction activity requiring a permit to one acre.

7. TYPES OF DISCHARGES COVERED

This permit covers storm water discharges from small MS4s.

The federal regulations describe what constitutes a "small MS4" at 40 CFR 122.26(a)(16). The definition depends on a municipality's location in a UA as determined by the 1990 and 2000 censuses. The initial notice of these regulations in the Federal Register on December 8, 1999, listed seven UAs in WV, containing more than 40 municipalities, which are also listed. This list is based on the 1990 census and additional UAs and MS4s may be identified during 2003 based on the 2000 census.

The EPA's December 8, 1999 Federal Register notice also listed six potential UAs in WV. The federal regulations require the WVDEP to determine if the municipalities in those areas will be subject to the General Permit requirements. The WVDEP will make this determination and notify the effected entities.

8. MONITORING REQUIREMENTS

There are no numerical effluent limits or specific discharge monitoring requirements specified in this General Permit. Effluent limits are established in the General Permit in the form of storm water best management practices, which are designed to prevent the discharge of contaminated storm water to surface waters of the state to the maximum extent practicable.

40 CFR 122.44(k) allows an NPDES permit to include BMPs when numeric effluent limitations are infeasible or the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Clean Water Act.

To aid in assessing achievement of improved water quality from the development and implementation of storm water BMPs, the permittee will be required to submit an annual report to the DWR. The DWR will review the annual report and program implementation to assess the effectiveness of the permittee's NPDES program for eliminating non-storm water discharges and reducing the discharge of pollutants to the maximum extent possible.

The State of West Virginia, Department of Environmental Protection, Division of Water Resources, has made a tentative decision for a State NPDES Permit as listed on this Fact Sheet. In order to provide public participation on the proposed issuance of the required permit, the following information is being supplied in accordance with Title 47, Series 10, Section 11.3.e.2 and 3, of the West Virginia Legislative Rules.

Any interested persons may submit written comments on the Draft Permit by addressing such to the Director of the Division of Water Resources within 30 days of the date of the public notice. Comments will be accepted until February 24, 2003. Such comments or requests should be addressed to:

**Director, Division of Water Resources
Department of Environmental Protection
1201 Greenbrier Street
Charleston, WV 25311-1088**

**ATTENTION: Anne Howell
Phone: (304) 558-4253
Fax: (304) 558-4530
E-mail: ahowell@mail.dep.state.wv.us**

All comments received within this period will be considered prior to acting on the Draft General Permit. Correspondence should include the name, address and the telephone number of the writer and a concise statement of the nature of the issues raised. Comments will also be accepted in oral or written form at the public hearing.

All applicable information concerning any permit application and the tentative decisions is on file and may be inspected, by appointment, or copies obtained at a nominal cost, at the offices of the Division of Water Resources, at 1201 Greenbrier Street, Charleston, WV, between 8:00 a.m. and 4:00 p.m. on business days.

Hearing impaired individuals having access to a Telecommunication Device for the Deaf (TDD) may contact our agency by calling (304) 558-2751. Calls must be made 8:30 a.m. to 3:30 p.m. Monday through Friday.

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DIVISION OF WATER RESOURCES
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GENERAL PERMIT FOR STORM WATER DISCHARGES
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

ADDENDUM TO FACT SHEET AND RATIONALE

Based on comments received from the public and the Environmental Protection Agency (EPA) during the public comment period, the following changes were made to the general permit.

1. The DWWM is now requiring the submittal of a Notice Of Intent (NOI) by March 10, 2003. The NOI will provide initial permit coverage until the submittal of the Storm Water Management Program (SWMP) with the Site Registration Application (SRA) form.
2. The SRA form and SWMP must be submitted within 12 months of the issuance date of the general permit. The SWMP will be reviewed by the DWWM and corrections required as may be necessary to ensure development of an appropriate program.
3. With the expiration of the Inter-modal Surface Transportation and Efficiency Act (ISTEA) exemption of 1991, municipally owned facilities discharging storm water associated with industrial activity must now receive permit coverage for those discharges. To facilitate this required permit coverage, language was added at Part II.B.6.c) to allow coverage for municipal facilities.
4. Two conditions were added to Part III Special Conditions. Part III.D was added to address Discharges to Impaired Waters. Also, Part III.E was added to address Endangered and Threatened Species.
5. Several minor wording changes were made respective of EPA's comments.

No other aspects of the terms and conditions of the draft General Permit for STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) were changed.